

Ordinance No. 120477

Council Bill No. 113767

AN ORDINANCE relating to the Department of Neighborhoods; accepting the proposal of Seneca LLC to purchase and develop property located at the northwest corner of 13th Avenue and East Columbia Street in the 12th Avenue Development Area of the City of Seattle; authorizing execution of a contract for sale of the property; by quit claim deed, execution of closing documents, and administration of the transaction; and designating the disposition of sale proceeds.

CF No. _____

Date Introduced:	JUL 23 2001	
Date 1st Referred:	JUL 23 2001	To: (committee) Finance, Budget & Economic Development Committee
Date Re - Referred:		To: (committee)
Date Re - Referred:		To: (committee)
Date of Final Passage:	8-6-01	Full Council Vote: 9-0
Date Presented to Mayor:	8-6-01	Date Approved: 8/15/01
Date Returned to City Clerk:	8/16/01	Date Published: 3/28/02 T.O. <input checked="" type="checkbox"/> F.T. _____
Date Vetoes by Mayor:		Date Veto Published:
Date Passed Over Veto:		Veto Sustained:

The City of Seattle - Legislative Department
Council Bill/Ordinance sponsored by: _____

Committee Action:

DP 4-0 (JO, RC, NL, RM)

8-6-01 Held 8-0

(Excused: Malver)

8-13-01 Passed 9-0

This file is complete and ready for presentation to Full Council. Com

LAW DEPARTMENT

Law Dept. Review

OMP
Review

City Clerk
Review

ORDINANCE 120477

AN ORDINANCE relating to the Department of Neighborhoods; accepting the proposal of Seneca I L.L.C. to purchase and develop property located at the northwest corner of 13th Avenue and East Columbia Street in the 12th Avenue Development Area of the City of Seattle; authorizing execution of a contract for sale of the property, by quit claim deed, execution of closing documents, and administration of the transaction; and designating the disposition of sale proceeds.

WHEREAS, the City Council, by Resolution 28621, adopted the Twelfth Avenue Development Plan (the "12th Avenue Plan") with regard to the area of the City of Seattle (the "City") bounded by East Marion Street on the north, East Jefferson Street on the south, 12th Avenue on the west, and 14th Avenue on the east (the "12th Avenue Development Area"); and

WHEREAS, the Department of Neighborhoods issued a request for qualifications for the development of City-owned properties in the 12th Avenue Development Area; and

WHEREAS, The Seneca Real Estate Group, Inc. submitted its qualifications to develop the parcels located at the northwest corner of 13th Avenue and East Columbia Street (as legally described in section 1 of this ordinance, the "Property") in the 12th Avenue Development Area; and

WHEREAS, the Director of the Department of Neighborhoods (the "Director") determined that The Seneca Real Estate Group, Inc. was qualified to prepare and submit complete development plans for the Property (the "Proposal"); and

WHEREAS, the Director has confirmed that the Proposal of The Seneca Real Estate Group, Inc. is consistent with the goals and objectives of the 12th Avenue Plan, and has recommended that the Proposal be accepted;

WHEREAS, The Seneca Real Estate Group, Inc. has assigned its interest in the Proposal to Seneca I L.L.C.; and the Director has determined that Seneca I L.L.C. is qualified to purchase and develop the Property in accordance with the Proposal; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The Proposal of Seneca I L.L.C. ("Developer") to purchase and develop the Property, legally described as:

Lots 11 and 12, Block 11, Supplementary Plat of Edes and Knights Addition to the City of Seattle, according to the plat thereof recorded in Volume 2 of Plats, page 194, records of King County, Washington; situated in the City of Seattle.

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.



1 is hereby found to be in the public interest and in furtherance of the purpose of the 12th Avenue Plan;
2 and the proposal is hereby accepted, subject to the Developer's performance of all conditions of the
3 Purchase and Sale Agreement referred to in Section 2 below.

4 Section 2. The Director of the Department of Neighborhoods (the "Director") is hereby
5 authorized to execute and deliver, for and on behalf of the City, a Purchase and Sale Agreement with the
6 Developer (the "Agreement") substantially in the form contained in Exhibit A hereto, and to execute and
7 deliver to the Developer a quit claim deed substantially in the form contained in Attachment A to the
8 Agreement, upon payment to the City of the purchase price and satisfaction of all conditions to be
9 satisfied prior to closing under the Agreement. The purchase price shall be Three Hundred Sixty
10 Thousand Dollars (\$360,000). The Director is further authorized to execute such other instruments and
11 documents as may be necessary or desirable to effectuate the sale of the Property to the Developer
12 consistent with the terms of the Agreement. Proceeds from the sale of the Property shall be deposited in
13 the Cumulative Reserve Subfund - Unrestricted Subaccount - 00164.

14 Section 3. The Director is hereby designated as the authorized representative of the City in
15 connection with the administration of the terms of the Agreement and deed, and for that purpose only,
16 said Director is hereby authorized to (a) enter into and approve changes in performance dates and
17 timelines contained in the Agreement and approve the Developer's construction plans, financing plans,
18 and changes thereto, both to the extent consistent with the Agreement and the 12th Avenue Plan and
19 determined by the Director to be necessary and reasonable to further the development of the Property,
20 and (b) to issue appropriate certification when the improvements have been completed. City approval of
21 construction plans remains subject to issuance of all necessary land use and construction permits.

22 Section 4. Any act pursuant to the authority and prior to the effective date of this ordinance is
23 hereby ratified and confirmed.

24



1 Section 5. This ordinance shall take effect and be in force thirty (30) days from and after its
2 approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after
3 presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

4 Passed by the City Council the 13th day of August 2001, and signed by me in open
5 session in authentication of its passage this 13th day of August, 2001.

6 Margaret O'Connell
7 President of the City Council

8 Approved by me this 15th day of AUGUST, 2001.

9 Paul Schull
10 Mayor

11
12 Filed by me this 16th day of August, 2001.

13 Justin E. Deppier
14 City Clerk

15 (Seal)



City of Seattle

Paul Schell, Mayor

Department of Neighborhoods

Jim Diers, Director

July 9, 2001

The Honorable Margaret Pageler, President
Seattle City Council
1100 Municipal Building
600 Fourth Avenue
Seattle, Washington 98104

Via: Joan E. Walters, Budget Director
Department of Finance

Re: Authorization to Sell Property in the 12th Avenue Development Area
to Seneca I L.L.C. (Seneca Real Estate Group)

Dear Councilmember Pageler:

I am pleased to forward to you this ordinance seeking authority to sell a City-owned parcel located at 13th Avenue and E. Columbia (northwest corner) in the Squire Park neighborhood just east of Seattle University. The ordinance authorizes the Department of Neighborhoods to sell the parcel by Quit Claim Deed to the Seneca I L.L.C. as the successor of the Seneca Real Estate Group, for construction of residential apartments. This development will be the third phase of the larger Seneca development. Phase I of this development is located on the northeast corner of 12th and Columbia and was completed this year with a similar phase II south of Columbia, presently under design and tentatively scheduled for construction late this year and into early next year. Phase III of this development will consist of a stand alone apartment complex to the rear (east) of the Phase I building. When complete the three phases of this development will contain almost 300 residential units and two blocks of street front retail.

I urge the City Council to approve the sale of this property to Seneca I L.L.C. as the successor to the Seneca Real Estate Group. The proposed development is consistent with the goals and objectives of the 12th Avenue Development Plan adopted by the City Council in 1992.

Sincerely,



Jim Diers

JD:sdsb

Attachments: Ordinance
Purchase and Sale Agreement

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700 Third Avenue, Suite 400 Arctic Building, Seattle, WA 98104 - 1848
Tel: (206) 684-0464, TDD: (206) 684-0464, Fax: (206) 233-5142

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Attachment B: Fiscal Note

Department:	Contact Person/Phone:	CBO Analyst/Phone:
Neighborhoods	Steve Sheppard, 684-0302	Marilynne Gardner 233-5109

Legislation Title:

AN ORDINANCE relating to the Department of Neighborhoods; accepting the proposal of Seneca I L.L.C. to purchase and develop property located at the northwest corner of 13th Avenue and East Columbia Street in the 12th Avenue Development Area of the City of Seattle; authorizing execution of a contract for sale of the property, by quit claim deed, execution of closing documents, and administration of the transaction; and designating the disposition of sale proceeds.

Summary of the Legislation:

This legislation will authorize the Department of Neighborhoods to: 1) enter into a purchase and sale agreement with Seneca I L.L.C. for the sale and development of property located in the 12th Avenue Development Area on the northwest corner of 13th Avenue and East Columbia Street, 2) deposit proceeds from the property sale to the Cumulative Reserve Subfund, Unrestricted Subaccount, and 3) administer the transaction.

Background (Include justification for the legislation and funding history, if applicable):

The City of Seattle, neighborhood residents, businesses, property owners and institutions came together in 1991 to produce the 12th Avenue Development Plan. The Seattle City Council adopted the plan in October 1992 by Council Resolution 28621. Under the Plan, the City and Seattle University exchanged properties each owned. Seattle University obtained the old Seattle Transit bus barn and the City obtained six commercially zoned parcels on or near 12th Avenue. The plan stipulated that the properties obtained by the City be sold and developed for market-rate mixed use commercial and housing development. Proceeds from the land sales were directed to the completion of street and street-related improvements identified in the Plan including installation of new curbs, gutters, sidewalks and lane re-configuration on key portions of 12th Avenue between Madison and Fir Streets.

Funding of the street improvements is intended to be entirely from land sales proceeds which are deposited in the Cumulative Reserve Subfund, Unrestricted Account 00164 as received. Seattle Transportation has established the 12th Avenue Project (TC366030) in its 2001-2006 Capital Improvement Program and will manage the implementation phase of the 12th Avenue Development Plan. Sale of the final three 12th Avenue properties will result in a balance of approximately \$1.9 million from property sales. Contingent upon receipt of funds, appropriation of said funds will be proposed through the Mayor's Proposed 2002 Budget.

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Sustainability Issues (related to grant awards):

Not applicable.

Estimated Expenditure Impacts:

FUND	2001
Not applicable	
TOTAL	

There will be minor closing costs associated with the sale of the parcel which will be netted from the proceeds.

Estimated Revenue Impacts:

FUND	2001
Cumulative Reserve Subfund, Unrestricted Subaccount 00164	\$360,000
TOTAL	\$360,000

One-time \$ 360,000

On-going \$ _____

Estimated FTE Impacts:

FUND	2001
	0

Full Time 0 # Part Time _____ # TES _____

Do positions sunset in the future? If so, when?
No.

Other Issues (including long-term implications of the legislation):

This will continue the long-term commitment to sell the remaining parcels and pursue the improvement of 12th Avenue in accordance with the 12th Avenue Development Plan adopted by Council Resolution 28621.

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Purchase and Sale Agreement

This Purchase and Sale Agreement (the "Agreement") is made as of the ____ day of _____ 2001, by and between The City of Seattle, a municipal corporation of the State of Washington, acting through its Department of Neighborhoods (the "City") and Seneca I L.L.C., a Washington limited liability company, whose address is 1201 Third Avenue, Suite 2350, Seattle, Washington, 98101 ("Purchaser").

WITNESSETH:

WHEREAS, the City Council, by Resolution No. 28621, adopted the Twelfth Avenue Development Plan ("12th Avenue Plan"); and

WHEREAS, in response to a City initiative for development of City-owned property within the boundaries of the 12th Avenue Plan, The Seneca Real Estate Group, Inc., a Washington corporation, submitted to the City's Department of Neighborhoods ("DON") schematic designs and plans, prepared by a architect licensed to practice by the State of Washington, describing the site plan, architectural character, allocation of residential and commercial space, and relationship to the surrounding environment of the improvements to be developed (the "Schematic Plans") on the real property located at the northwest corner of 13th Avenue and East Columbia Street and legally described in section 1 hereof (the "Property"); and

WHEREAS, DON reviewed the Schematic Plans against the goals and objectives of the 12th Avenue Plan and has approved the Schematic Plans; and

WHEREAS, The Seneca Real Estate Group, Inc. assigned its interest in the Schematic Plans to Seneca I L.L.C., and the Director of DON has determined that Seneca I L.L.C. is qualified to purchase and develop the Property; and

WHEREAS, by Ordinance XXXXXXXX, passed XXXXXXXX, 2001, the City Council authorized the sale of the Property to Purchaser, and authorized the Director of DON to execute, deliver and administer a contract for sale of said Property.

Now, Therefore, the parties hereto, for and in consideration of the promises and mutual obligations herein undertaken, do hereby agree as follows:

PART I

Section 1. Agreement to Convey Property

Subject to all of the terms and conditions of this Agreement, the City agrees to convey to Purchaser that certain real property located in The City of Seattle more particularly described as follows:



Lots 11 and 12, Block 11, Supplementary Plat of Edes and Knights Addition to the City of Seattle, according to the plat thereof recorded in Volume 2 of Plats, page 194, records of King County, Washington; situated in the City of Seattle.

Section 2. Payment of Purchase Price

Purchaser agrees to pay to the City the sum of \$360,000, payable at the time of closing in cash, by wire transfer, or by cashier's check. Earnest money paid by Purchaser shall be credited to the purchase price at closing in accordance with the conditions described in Section 6 below.

Section 3. Conveyance

Upon the payment of the sum provided in Section 2 and all other amounts required to be paid by Purchaser hereunder, and upon the satisfaction of the conditions set forth in this Agreement below, the City shall convey title to the Property by quit claim deed in the form attached hereto as Attachment A (the "Deed"), which is hereby approved by Purchaser.

Section 4. Title Insurance

The City shall provide Purchaser with an owner's policy of title insurance in standard form, at the City's expense. Purchaser acknowledges that a preliminary title commitment with respect to the Property from Pacific Northwest Title Company of Washington, Inc ("Title Commitment") has been provided by the City for Purchaser's inspection, and that Purchaser has reviewed the Title Commitment. Any liens, encumbrances or defects (collectively, "exceptions") shown thereon are hereby approved and accepted by Purchaser.

Section 5. Conditions Precedent

The following shall be conditions precedent to the City's obligation to convey the Property:

- (a) Purchaser shall have obtained the MUP and the building permit for the project to be developed on the Property.
- (b) Purchaser shall provide evidence satisfactory to the City that Purchaser has the necessary financing for project development as provided in Section 304.
- (c) Purchaser shall have deposited with Pacific Northwest Title Company, Inc., (the "Escrow Agent") for delivery to the City the sum of money required to pay the purchase price stated under Section 2 of this Agreement and all other amounts payable by Purchaser hereunder, in cash or cashier's check or by wire transfer.



- (d) Each of Purchaser's representations contained herein shall be true as of the date of Closing (as hereinafter defined).
- (e) Purchaser shall otherwise be in compliance with all of the terms hereof.

Section 6. Earnest Money

Purchaser shall deposit with the City earnest money in the amount of Eighteen Thousand Dollars (\$18,000), which is five percent (5%) of the purchase price ("Earnest Money") immediately upon execution of this Agreement. Earnest Money shall be held in the Clearing Account of the City Department of Finance until such time as the Purchaser becomes entitled to return of such Earnest Money under the terms hereof, or until the City becomes entitled to retain such Earnest Money under the provisions of this Agreement. Purchaser shall not be entitled to interest on Earnest Money. Earnest Money will be credited to the purchase price at Closing, except as may be set forth hereunder.

Section 7. Closing

- A. Closing shall take place on such date as the Purchaser shall specify by notice to the City at least ten (10) days in advance of the closing date, which notice may be given at any time within thirty (30) days after all conditions herein required to be satisfied prior to Closing, other than deposit of funds and instructions in escrow, have been satisfied, but in any event Closing shall occur no later than 18 months from execution of this Agreement. "Closing" shall mean the execution, delivery and recording (as appropriate) of all documents and payment of all funds into escrow as provided herein.
- B. At Closing, the Escrow Agent shall be instructed to record the Deed and to instruct in turn the King County Office of Records and Elections (County Recorder) to mail the original of the Deed following recording, to the Purchaser as grantee. The escrow fee charged in connection with this Closing shall be paid one-half each by the Purchaser and the City. Any taxes, assessments or public charges that are payable with respect to the Property during the City's ownership thereof shall be prorated as of Closing. Purchaser shall pay the cost of recording the Deed and any documents required by Purchaser's financing. Purchaser shall also pay to the City at time of Closing a cash deposit of Eighteen Thousand Dollars (\$18,000), which is five percent (5%) of the purchase price (the "Completion Deposit") as security for completion of the improvements on the Property as approved by the City, to be released upon receipt by Purchaser of a Certificate of Occupancy from the City. This Completion Deposit shall be held in the City Department of Finance Clearing Account until such time as the Purchaser becomes entitled to return of such deposit under the terms hereof, or until the City becomes entitled to retain such deposit under the provisions



of this Agreement. At the Purchaser's option a performance bond in an amount of 10% of the purchase price, in form satisfactory to the City, conditioned to be paid to the City in full if a Certificate of Occupancy is not issued prior to the deadline for completion of the Improvements hereunder, may be submitted in lieu of the Completion Deposit at the time the Deed is recorded. Purchaser shall not be entitled to interest on the Completion Deposit. Each party shall sign and deliver such escrow instructions and other documents as are reasonably necessary to effect Closing as contemplated herein.

- C. If the sale fails to close due to fault of one of the parties, as described in Sections 702 and 703 of Part II of this Agreement, then such party shall be solely responsible for all escrow and title insurance cancellation charges. If the sale fails to close by the date set forth in subsection A above for reasons other than those set forth in Sections 702 or 703, then the Earnest Money shall be returned to Purchaser less one half of any escrow or title insurance cancellation charges and the City shall pay such charges one-half from the Earnest Money and one-half from the City's own funds.

PART II

DEVELOPMENT OF PROPERTY

Section 101. Improvements

Purchaser shall develop the Property in accordance with the Schematic Plans and the objectives of the Twelfth Avenue Plan. The project to be constructed on the Property, as shown in the Schematic Plans (as such may be revised upon approval of the Director of DON), is referred to as the "Improvements".

ACCEPTANCE, CONDITION AND POSSESSION OF PROPERTY

Section 201. Acceptance AS IS

Purchaser acknowledges and agrees that the City has provided Purchaser with a Phase I environmental assessment with regard to the Property dated September 10, 1997, prepared by Eco Compliance Corporation (the "Environmental Assessment"). Purchaser also acknowledges and agrees that it has been afforded the opportunity to make such investigations and inspections of the Property and of City's records with respect to the Property and matters related thereto as Purchaser desires, and that it has entered into this Agreement on the basis of its own investigation of the physical condition of the Property, including subsurface conditions. Purchaser further specifically acknowledges and agrees that notwithstanding any prior or contemporaneous oral or written representations, statements, documents, reports, studies or communications of the City or, this Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof



and supersedes any such prior or contemporaneous oral or written representations, statements, documents, reports, studies or communications. In addition, Purchaser specifically acknowledges and agrees that (a) EXCEPT AS MAY BE SPECIFICALLY SET FORTH IN THIS AGREEMENT, THE CITY DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY OR ANY RELATED MATTER, (b) the Property is sold to Purchaser in an "AS IS" condition as of the Closing, and, except as specifically set forth in Section 203 hereof, Purchaser assumes the risk that adverse physical conditions may not have been revealed by its investigation, (c) Purchaser explicitly took into account such risk in its decision to enter into this Agreement on the terms set forth herein and (d) Purchaser will accept title to the Property in its "AS IS" condition subject to all defects and conditions, including such defects and conditions, if any, that may not have been revealed by Purchaser's investigation.

Section 202. Changes in Condition

If Purchaser or DON becomes aware of any change in the physical condition of the Property after the date hereof and prior to Closing that would materially impair the development thereof as contemplated hereunder, or would substantially increase the cost of such development, such party shall promptly notify the other party of such change. If any such change is caused entirely or primarily by the acts of Purchaser or its agents, employees or contractors, Purchaser shall restore the Property to its prior condition. If such change is caused entirely or primarily by the City, the City at its discretion (i) may restore the Property to its prior condition or (ii) may terminate this Agreement, refund the Earnest Money and reimburse Purchaser for out-of-pocket costs (as defined in Section 702 hereof) directly related to development of the Property and incurred by Purchaser from September 29, 1997 through the date on which the City notifies Purchaser of its election of remedies (i) or (ii). Such notification of election shall be made in writing and delivered by hand. If neither the Purchaser nor the City is entirely or primarily responsible under the terms of this section 202 for such changes in the physical condition of the Property, then (1) if the City gives notice to Purchaser within fifteen (15) days after receiving notice of such change in condition that the City elects to remedy such changed condition, then this Agreement shall remain in effect and the City shall remedy such changed condition prior to closing, and (2) if the City does not give notice of such election, then Purchaser shall have the option, by notice to the City no later than fifteen (15) days after giving notice to, or receiving notice of, such changed condition (as the case may be), to proceed with closing the purchase under the terms of this Agreement or to cancel this Agreement and receive a full refund of all Earnest Money, in which case neither party shall have any further obligation or liability, of any kind whatsoever, to the other party under this Agreement. Any notice from Purchaser to City hereunder that Purchaser is prepared to close the purchase shall constitute Purchaser's representation that it has reinspected the Property and agrees to accept it in its condition on the date of such notice, whether or not such condition has changed from the date hereof.



Section 203. Environmental Indemnification

The City agrees to defend (with counsel from the Seattle City Attorney's Office or other counsel, at the City's discretion), fully indemnify and hold entirely free and harmless Purchaser, and its officers, employees, directors, agents, successors and assigns from and against all claims, judgments, damages, penalties, fines, costs, liabilities, losses or expenses (including sums paid in settlement of claims, the expenses of investigations and cleanups, consultant fees and expert fees) (henceforth collectively "Claims") which are imposed on, paid by or asserted against Purchaser to the extent that such arise from the presence of Hazardous Substances, as defined below, on the Property; provided, however, that this indemnification shall not apply to the extent such Claims are caused by the acts or omissions of Purchaser. Further, the City shall not be liable for any lost, delayed or diminished profits, revenues or opportunities that may be suffered or sustained by Purchaser or its officers, employees, directors, agents, successors or assigns with respect to such Claims.

Purchaser shall immediately notify DON of any Hazardous Substances discovered on the Property during the term of this indemnification. Purchaser shall give DON prompt written notice of any Claim that has given or could give rise to a right of indemnification. This notice shall be given to DON if Purchaser performs any voluntary investigative or cleanup work during the term of this indemnification. The City shall have the right and responsibility of contesting, defending, litigating, settling or satisfying any Claim made against Purchaser during the term of this indemnification.

This indemnification shall expire upon the City's issuance of a Certificate of Occupancy to Purchaser for the Improvements constructed on the Property. The City's monetary obligation under this indemnification shall not exceed \$50,000.00, exclusive of the City's defense costs.

Neither this indemnification nor any other provision of this Agreement constitutes a waiver of or release of, and in no way limits, the rights or responsibilities of the City or Purchaser in any future action pursuant to the Washington Model Toxics Control Act, RCW Chapter 70.105D, or the Comprehensive Environmental Response, Compensation and Recovery Act, 42 U.S.C. 9501, et seq., as either statute is amended or supplemented, or pursuant to any successor statute.

As used in this Agreement, the term "Hazardous Substances" shall mean any hazardous, toxic or dangerous waste, substance or material, or contaminant, pollutant or chemical, known or unknown, defined or identified as such in (or for the purposes of) any existing or future local, state or federal law, statute, code, ordinance, rule, regulation, guideline, decree or order relating to human health or the environment or environmental conditions including but not limited to the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901 et seq.; the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2601 et



seq.; the Federal Water Pollution Control Act, 49 U.S.C. § 1801 et seq.; the Safe Drinking Water Act, 42 U.S.C. § 300 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. App. § 1802 et seq.; the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq.; the Washington Model Toxics Control Act, RCW Ch. 70.105D; and the Washington Hazardous Waste Management Act, RCW Ch. 70.105; including all rules, regulations and guidelines promulgated under such statutes and including all amendments and supplements to such statutes and rules, regulations and guidelines, and any order or decree relating to or imposing liability or standards or conduct concerning, or prohibiting, limiting or regulating exposure to, any waste, material, substance, contaminant, pollutant or chemical.

Section 204. Possession

Purchaser shall be entitled to exclusive possession of the Property (subject to the rights of the City contained herein) upon recording of the Deed.

Section 205. Right of Entry

The City hereby grants to Purchaser and Purchaser's employees, agents and contractors, the right to enter upon the Property from time-to-time, prior to any termination of this Agreement, for the purpose of conducting therein and thereon such inspections and studies as Purchaser may reasonably deem necessary or appropriate with respect to developing the Improvements on the Property, but only in accordance with the following conditions:

- A. Purchaser's entry upon the Property, including any improvement thereon, shall occur during normal business hours for the purposes set forth in this Section 204, upon at least forty-eight (48) hours prior notice (which may be by facsimile) to the City and, if the City so notifies Purchaser, in the presence of an agent or employee of the City.
- B. Any contract entered into by Purchaser for any consultants' services with regard to the Property shall expressly provide that the City shall have no obligation thereunder and that the charges for such services shall not be a lien on the Property unless and until Purchaser shall have completed the purchase thereof from the City. Prior to entry of each such consultant, Purchaser shall provide the City with a lien waiver from that consultant.
- C. No activities (including without limitation excavations) that require a permit under applicable City or other governmental codes or regulations shall be conducted on the Property unless Purchaser obtains such permits at its sole expense and complies with all conditions thereof.
- D. Purchaser shall use its best efforts to avoid the creation or maintenance of hazards as a result of its activities on the Property, and Purchaser shall restore



to its previous condition any portion of the Property disturbed by such activities.

- E. Prior to any entry on the Property, Purchaser shall furnish to the City evidence satisfactory to the City of a current policy of general commercial liability insurance in effect for itself and for each of its consultants entering onto the Property, naming the City, its elected officials, employees and agents as an additional insured, that shall insure against personal injury or damage to property with minimum limits of \$500,000 each occurrence and \$1,000,000 annual aggregate. At no time shall Purchaser enter upon any portion of the Property owned by the City unless such insurance is in effect.
- F. Purchaser hereby agrees to release and forever discharge, indemnify, defend and hold the City, and its elected officials, employees and agents, harmless from and against any and all liability including, without limitation, claims, liability, costs, damages or fees (including but not limited to attorneys' fees and costs) incurred as a result of or arising in connection with Purchaser's entry onto the Property, including but not limited to Purchaser's release of any Hazardous Substance thereon.

PLANS, APPROVALS, FINANCING AND CONSTRUCTION

Section 301. Design and Schematic Plans

Purchaser represents, warrants and agrees that it shall develop the Property and construct the Improvements thereon in substantial conformity with Schematic Plans, all applicable state and local laws and regulations, and the objectives of the Twelfth Avenue Plan. If so requested by the Director, the Purchaser agrees to attend one or more community meetings with regard to the Schematic Plans.

Section 302. Construction Plans and Specifications

Purchaser shall prepare plans and specifications with respect to the construction of Improvements ("Construction Plans") in substantial conformity with the previously approved Schematic Plans, this Agreement and all applicable state and local laws and regulations and in sufficient completeness and detail for issuance of a building permit for the Improvements by the DCLU. Purchaser shall apply for such building permit within one hundred eighty (180) days of execution of this Agreement. As a condition precedent to the City's obligation hereunder to convey the Property to Purchaser, a building permit for construction of the Improvements must be issued by DCLU no later than 450 days from execution of this Agreement.

Purchaser shall submit the Construction Plans to DON simultaneously with their submission to DCLU. Within fifteen (15) days of receipt, the Director of DON shall review Construction Plans solely for the purpose of determining whether they are in substantial conformity with the approved Schematic Plans. If the Director determines that,



in comparison to the Schematic Plans, the Construction Plans show a decrease by fifteen percent (15%) or more in the number of on-site parking spaces, number of residential units or square footage of retail space, the Director shall so notify Purchaser in writing, providing a statement of reasons for his rejection of the submitted Construction Plans. In such event, Purchaser may submit a revised set of Construction Plans for review by the Director in accordance with this paragraph. If the Director does not approve Construction Plans (either upon initial submission or revision), then either the City or Purchaser may terminate this Agreement by notice to the other party and the Escrow Agent, in which case the Earnest Money shall be retained by the City as liquidated damages, as the City's sole and exclusive remedy, and neither party shall have any further liability or obligation, of any kind whatsoever, to the other under this Agreement.

If any transmittal of the Construction Plans contains conspicuous notice on the first page thereof of the time limit for DON review and if, within fifteen (15) days of receipt, the Director does not give Purchaser notice of any changes in the Construction Plans required for conformity with the Schematic Plans, then the Construction Plans shall be deemed approved.

Purchaser shall submit Construction Plans to DCLU and DON within one hundred eighty (180) days of execution of this Agreement. If Construction Plans conforming to this Agreement are not submitted within such period, the City shall have the right, by notice to Purchaser and Escrow Agent, to terminate this Agreement, in which case the Earnest Money shall be retained by the City as liquidated damages, as the City's sole and exclusive remedy.

Section 303. Changes in Construction Plans or Schematic Plans

If Purchaser desires to make any changes to the Schematic Plans, or any material changes to the Construction Plans that would result in the Construction Plans not substantially conforming to the Schematic Plans approved by the Director, Purchaser shall submit the proposed change to the Director. If the Director finds that the Construction Plans and/or Schematic Plans as modified by the proposed change will fulfill the objectives of 12th Avenue Plan and materially conform to Schematic Plans, the Director shall approve the proposed change and evidence his approval by endorsement of the same on the revised plan sheets and by notifying the Purchaser and the DCLU Director in writing of his approval.

If the Director finds that the proposed changes to the Construction Plans and/or Schematic Plans will not fulfill the objectives of the 12th Avenue Plan and/or do not materially conform to approved Schematic Plans, the Director, in the exercise of his reasonable discretion, may reject the proposed changes.

Changes in the Construction Plans and/or Schematic Plans shall be approved or rejected in whole or in part, by written notice from the Director to the Purchaser within fifteen (15) days of submittal by the Purchaser. If the City does not give notice of any required changes in Schematic Plans or Construction Plans within thirty (30) days of



receipt thereof, and if the transmittal of such plans contained conspicuous notice on the first page thereof of the time limit for review hereunder, then the changed plans shall be deemed approved by the Director.

If the Director rejects the proposed changes, the Purchaser may, within fifteen (15) days, submit a revision of the proposed changes, which the Director shall review within fifteen (15) days of receipt. The Director shall inform Purchaser of the Director's approval or rejection of the revision. If the Director rejects the proposed revision, he may terminate this Agreement by notifying Purchaser and Escrow Agent in writing. In such event, this Agreement will terminate, the City shall retain the Earnest Money as the City's sole and exclusive remedy, and neither party shall have any further liability or obligation, of any kind whatsoever, to the other under this Agreement. If the revision of the Construction Plans contains conspicuous notice on the first page thereof of the time limit for DON review and if, within fifteen (15) days of receipt, the Director does not give Purchaser notice of approval or rejection, then the revision to the Construction Plans shall be deemed to be approved.

Section 304. Financing

Purchaser represents that Purchaser has in effect a letter of interest from _____ insert name of Lender (the "Lender") for financing the acquisition and construction of site improvements of the type contemplated by this Agreement, under which the Lender will issue a financing commitment upon completion and approval of an underwriting process. Purchaser shall, within one hundred twenty (120) days after the date hereof, apply to Lender for a financing commitment on the Property, and shall diligently seek to obtain that commitment in an amount necessary to fund the purchase and construction contemplated hereby. As a condition to City's obligations hereunder, Purchaser shall provide DON, no later than two hundred forty (240) days after date hereof, a financing commitment from the Lender or another construction lender reasonably satisfactory to the Director (either, the "Primary Construction Lender") that demonstrates to the reasonable satisfaction of the Director that Purchaser will obtain all financing necessary to complete the Improvements in accordance with this Agreement, the Schematic Plans, the MUP and the 12th Avenue Plan, and that no term of the financing commitment is in conflict with the terms of Agreement, the Schematic Plans, the MUP or the 12th Avenue Plan. If Purchaser fails to submit such commitment by such date, then the City may, by notice to Purchaser, terminate this Agreement, in which case the Earnest Money shall be returned to Purchaser and neither party shall have any liability hereunder. If the City does not give notice to Purchaser within fifteen (15) days after receipt of a copy of the financing commitment that any terms thereof do not meet the criteria set forth in this Section 304, then the City shall be deemed to have approved the terms thereof.

Section 305. Time for Construction

Purchaser agrees that it shall commence construction of the Improvements within sixty (60) days after Closing and diligently proceed to complete construction of the Improvements. Completion of the Improvements (as evidenced by the City's issuance of



a Certificate of Occupancy) shall occur no later than five hundred forty (540) days after Closing. The work shall at all times be subject to inspection by DCLU.

Section 306. Report on Progress

Subsequent to the conveyance of the Property to the Purchaser and until construction of the Improvements is complete, the Purchaser shall, within ten (10) days of any request by the City, forward to the Director a report in writing as to the actual construction progress.

Section 307. Purpose of Review of Plans

Review by DON of Schematic Plans and Construction Plans is for the purpose of assuring that the Improvements further community development objectives and assuring conformity with the terms of this Agreement. Such review by DON shall not be construed as a representation or warranty to Purchaser or any third party that the plans and specifications are adequate for any purpose, that there has been or will be compliance on the part of any contractor or subcontractor with the plans and specifications, that construction has been or will be free from faulty material or workmanship, or as to any other matter. Purchaser shall cause this Section 308 to be included in any contract for work into which Purchaser shall enter under this Agreement.

Section 308. Certificate of Occupancy

Promptly after issuance by DCLU of a Certificate of Occupancy with regard to the Improvements and delivery of a copy of such certificate to DON, the deposit shall be returned to Purchaser or the bond provided by Purchaser shall be exonerated unless the City has already exercised its right to retain the Deposit for a breach or default on the part of Purchaser.

Section 310. Limitation on Use of Hazardous Substances

Purchaser shall not use, or allow any agents, contractors, or subcontractors to use the Property to generate, manufacture, refine, transport, treat, store, handle, recycle, release or dispose of Hazardous Substances, except as may be reasonably necessary for Purchaser's development of the Property. All hazardous material used and stored on or about the Property shall be used and stored in compliance with all applicable local, state and federal environmental, health and safety laws and regulations.

REGULATORY CONDITIONS

Section 401. Women's and Minority Business Enterprise

Because this contract does not involve a public work or consultant services to the City, or the use of City funds, the minimum set-aside provisions of SMC Chapter 20.46A



NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

do not apply. Nonetheless, in connection with the construction of the Improvements, Purchaser shall:

- (1) Fulfill any women's business enterprise and minority business enterprise participation commitments submitted to the City;
- (2) Continue to make affirmative efforts to utilize women's business enterprises and minority business enterprises;
- (3) Require contractors and subcontractor(s) to represent that they will make affirmative efforts to utilize women's business enterprises and minority business enterprises;
- (4) Maintain records reasonably necessary for monitoring compliance with the requirements of this Section.

Section 402. Permits

Nothing in this Agreement is intended or shall be construed to require that the City exercise its discretionary authority under its regulatory ordinances to further the development of the Property, nor binds the City to do so. The City will process applications for permits as if such applications were made in the absence of this Agreement.

PROHIBITIONS AGAINST ASSIGNMENT AND TRANSFER

Section 501. Use of Improvements

Purchaser represents and agrees that the purchase of the Property is for the purpose of immediate development of a mixed commercial and residential complex and not for speculation in land holding.

Section 502. Prohibition Against Transfer of Property and Assignment of Agreement.

Purchaser represents and agrees that:

- A. Purchaser has not made or created or suffered to be made or created any assignment, conveyance, mortgage, lease, trust, power or transfer, of any sort, of this agreement or any interest herein, or any interest in or relating to the Property, or entered into any agreement or contract to do any of the foregoing and (except as authorized by Sections 601-605 and 814 herein) Purchaser shall not do any of the foregoing prior to issuance of a Certificate of Occupancy without the prior written approval of the City, which may be withheld in the City's sole discretion; provided that this Subsection A does not apply to leases of space within the Improvements to tenants.



- B. In order to request City approval for any transaction of the type referenced in Subsection A above, Purchaser shall submit to the City all documents relating to the proposed transactions and such information concerning the proposed transferee as the City shall request. If the City approves the transaction, as a condition of such approval, the transferee shall assume all obligations of Purchaser hereunder and shall agree to comply with such other conditions the City may find desirable in order to achieve and safeguard the purposes of this Agreement. This Subsection B shall not apply to mortgages or deeds of trust granted to the Primary Construction Lender as authorized in Section 601 below.
- C. In the absence of specific written agreement by the City to the contrary, no transfer or approval thereof by the City shall be deemed to relieve Purchaser, or any other party bound in any way by this Agreement or otherwise with respect to the construction of the Improvements, from any of its obligations with respect thereto.

MORTGAGE FINANCING; RIGHTS OF MORTGAGEES

Section 601. Limitation Upon Encumbrance of Property

Prior to the issuance of a Certificate of Occupancy for the Improvements, the Purchaser shall not engage in any financing or any other transaction creating any mortgage or other encumbrance or lien upon the Property without the express written consent of the Director, except for financing documents substantially as contemplated in a financing commitment from the Primary Construction Lender, approved or deemed approved by the City pursuant to Section 304 hereof, for acquisition of the Property and construction of the Improvements (the "Approved Financing").

The Purchaser shall notify DON in advance of any proposed financing other than the Approved Financing, secured by mortgage or other similar lien instrument, that Purchaser proposes to enter into with respect to the Property, or any part thereof (the "Proposed Financing"), and in any event Purchaser shall promptly notify DON of any encumbrance or lien that has been created on or attached to the Property, whether by voluntary act of the Purchaser or otherwise. If the terms of the Proposed Financing are reasonably satisfactory to the Director, considering the criteria set forth in Section 304 hereof, the City shall, at or after Closing hereunder, join in the execution of the mortgage or deed of trust for the sole purpose of subordinating the City's possibility of reverter (as described below) to the lien of such instrument, but with any liability of the City or its officers expressly disclaimed.

Section 602. Mortgagee Not Obligated to Construct

Notwithstanding any of the provisions for the Agreement, the holder of any mortgage authorized by the Agreement (including any such holder who obtains title to the Property or any part thereof as a result of foreclosure proceedings, or action in lieu



thereof) shall in no case be obligated by the provisions of the Agreement to construct or complete the Improvements or to guarantee such construction or completion; nor shall any covenant or any other provision in the Deed be construed to so obligate such holder; provided, that nothing in this Section or any other Section or provision of the Agreement shall be deemed or construed to permit or authorize any such holder to devote the Property or any part thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided or permitted in the 12th Avenue Plan.

Section 603. Copy of Notice of Default to Mortgagee

Whenever the City shall deliver any notice or demand to the Purchaser with respect to any breach or default by the Purchaser in its obligations or covenants under the Agreement, the City shall at the same time forward a copy of such notice or demand to each holder of any mortgage authorized by the Agreement which holder has been identified to the City in writing by Purchaser, at the last address of such holder shown in the records of the City.

Section 604. Mortgagee's Option To Cure Defaults

After any breach or default referred to in Section 603 hereof, each such holder shall (insofar as the rights of the City are concerned) have the right, at its option, to cure or remedy such breach or default and to add the reasonable cost thereof to the mortgage debt and the lien of its mortgage: Provided, that if the breach or default is with respect to construction of the Improvements, nothing contained in the Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction or completion of Improvements on the Property (beyond the extent necessary to conserve or protect improvements or construction already made) except for completion of the Improvements substantially as provided pursuant to this Agreement. In the case of any breach or default occurring after Purchaser shall have acquired the Property and shall have granted a mortgage or deed of trust in favor of the Primary Construction Lender, the Primary Construction Lender shall have an additional 30 days to cure such breach or default after the expiration of any cure period allowed to Purchaser, and if the breach or default cannot reasonably be cured within such 30-day period then the additional period of cure allowed to the Primary Construction Lender shall be extended for such time as is reasonably required to cure such breach or default, provided that the Primary Construction Lender shall give notice of its intent to cure and commence cure within such 30-day period and continue diligently to pursue such cure.

Section 605. Mortgage and Holder

For the purposes of the Agreement: The term "mortgage" shall include a deed of trust or other instrument creating an encumbrance or lien upon the Property, or any part thereof, as security for a loan. The term "holder" in reference to a mortgage shall include any insurer or guarantor of any obligation or condition secured by such mortgage or deed of trust.



DEFAULT AND REMEDIES

Section 701. In General

Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement, or any of its terms or conditions, by any party hereto, or any successor to a party, such party (or successor) shall, upon written notice from the other, proceed immediately to cure or remedy such default or breach, and, in any event, shall complete such cure within sixty (60) days after receipt of such notice or such shorter period as may be provided herein. In case such action is not taken or not diligently pursued, or the default or breach shall not be cured or remedied within the time permitted hereunder, the aggrieved party may pursue any remedies available at law or in equity, subject to the specific limitations herein.

Section 702. Termination By Fault of City Prior to Conveyance of Property

In the event that any of the following occurs prior to conveyance of the Property:

- A. The City fails to tender conveyance of the Property in the manner required herein after satisfaction of the conditions provided in this Agreement and notice to close from Purchaser as specified herein, and any such failure shall not be cured within sixty (60) days after notice from the Purchaser; or
- B. DON fails or refuses to approve Purchaser's Construction Plans pursuant to the terms of this Agreement without a statement of reasons for such refusal; or
- C. The City otherwise fails or refuses to carry out the terms and conditions of this Agreement prior to Closing;

then, at the option of Purchaser and following the notice and cure period specified in Section 701, this Agreement shall be terminated by written notice thereof to the City, Purchaser shall receive a full refund of the Earnest Money and Purchaser shall have the right, as its sole remedy, to proceed against the City for actual damages limited to out-of-pocket costs directly related to development of the Property. As used throughout this Agreement, the term "out-of-pocket costs" includes documented project management costs, not to exceed \$200,000, that are incurred from date of this Agreement and are directly related to the development of the Property but excludes indirect administrative or overhead costs and also excludes consequential damages of any kind whatsoever, such as but without limitation lost profits, lost business opportunities or interference with business or contractual expectancies.

Section 703. Termination by Fault of Purchaser Prior to Conveyance of Property



In the event that any of the following occurs prior to the conveyance of the Property:

- A. Purchaser (or any successor in interest) assigns or attempts to assign this Agreement or any rights therein or in the Property without the express consent of the City; or
- B. Purchaser does not submit Construction Plans as required by this Agreement or obtain necessary permits to allow construction in the manner and by the dates respectively provided in this Agreement, and such failure shall not be cured within thirty (30) days after the date of written demand by the City, which cure period shall be extended for up to sixty (60) days in the case of failure to obtain permits if the Purchaser demonstrates to the satisfaction of the City that it has used all reasonable diligence to obtain such permits and that additional time is required; or
- C. Purchaser, without legal excuse, gives notice that it will be unable or unwilling to close the Purchase as provided herein; or
- D. Purchaser, without legal excuse, does not tender the full consideration for and take title to the Property, and perform all other obligations of Purchaser at Closing upon tender of conveyance by the City pursuant to this Agreement; or
- E. Purchaser, without legal excuse, fails to give written notice of intent to close pursuant to Section 7.A of Part I hereof at least ten (10) days in advance of the last date for closing specified in such Section, notwithstanding the satisfaction of all conditions to Purchaser's obligation to close except those to be satisfied at Closing; or
- F. Purchaser, without legal excuse, otherwise fails to comply with the terms of this Agreement prior to Closing; or
- G. Purchaser fails to close on another parcel of property under another Contract for Sale of Land with the City within the period specified in such Contract, without reasonable cause or without written notice to the City reasonably in advance of the expiration of such period; or there are multiple failures by Purchaser to comply in material respects with the terms or conditions of the land sale contracts with the City, if such failures are not promptly corrected to the satisfaction of the City;

then, at the option of the City and following the notice and cure periods specified in Section 701, this Agreement and any rights of Purchaser or of any assignee or transferee in this Agreement or arising therefrom with respect to the City or the Property shall be terminated, and unless the sole ground for termination is item G above, the Earnest Money shall be retained by the City as liquidated damages, as the sole and exclusive remedy available to



the City, and neither Purchaser (or assignee or transferee) nor the City shall have any further rights against or liability to the other under this Agreement. If the sole ground for termination is item G above, then the Earnest Money under this Agreement shall be returned to Purchaser and neither Purchaser (or assignee or transferee) nor the City shall have any further rights against or liability to the other under this Agreement.

Section 704. Reversion of Title to City Upon Failure to Commence Construction or Complete Improvements or Certain Other Events Subsequent to Conveyance to Purchaser

- A. The City is selling the Property for the purpose of the immediate construction improvements as outlined in the Schematic Plans and in reliance on the representation of Purchaser that such Improvements will be constructed. Therefore, as set forth in the Deed, the conveyance of the Property to Purchaser shall be subject to a condition subsequent that shall remain in effect until receipt by the DON of a Certificate of Occupancy for the Improvements, to the effect that in the event of failure to commence construction of or complete the Improvements pursuant to the Agreement, or upon the occurrence of other events described therein prior to completion of the Improvements, and after failure on the part of Purchaser to cure or remedy such failure or other event within the period (if any) and in the manner stated in the Deed, the City at its option may declare a termination of all the rights and interests in and to the Property conveyed by the Deed to Purchaser, and that such title and interests to and in the Property shall vest in the City, upon which all rights of Purchaser (and all persons claiming through Purchaser) in and to the Property and possession thereof shall cease; provided, that such condition subsequent and any reverting of title as a result thereof in the City (1) shall always be subordinate to and limited by, and shall not defeat, render invalid, or limit in any way, (i) the lien of any mortgage authorized by the City pursuant to this Agreement, and (ii) any rights or interests provided in this Agreement for the protection of the holders of such mortgages; and (2) shall not apply to the Property once the Improvements to be constructed have been completed in accordance with this Agreement and the Certificate of Occupancy has been issued.
- B. If the City exercises its right to reversion title to the City pursuant to this section, the City shall return to Purchaser, without interest, all funds paid by Purchaser to the City for the Property, after deducting (1) any amounts used to pay off liens incurred or permitted by Purchaser, (2) City expenses related to this transaction, and (3) any amount by which the appraised value of the Property at the time of reversion to the City is exceeded by the price paid by Purchaser.
- C. In addition to, and not in the alternative to, the City's power of termination and possibility of reversion as provided for above, the City shall have the right, at any time when the City would have the right to declare a



termination of Purchaser's interest under the terms of the Deed, by notice to Purchaser and Escrow Agent, to elect to retain the Deposit without any deduction, offset or recoupment whatsoever, as liquidated damages in the event of default, violation or failure of the Purchaser as specified in this section. If the City makes such election to retain the Deposit or realize on the bond, then Purchaser shall have an additional ninety (90) days beyond the deadline otherwise applicable to remedy the failure or event giving rise to the City's right to terminate Purchaser's interest, prior to effectiveness of any termination.

Section 705. Other Rights and Remedies of City; No Waiver of Delay

Either party shall have the right to institute such actions or proceedings as it may deem desirable for effectuating its remedies. Any delay by either party in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Agreement shall not operate as a waiver of any rights or remedies or to deprive it of or limit such rights or remedies in any way; nor shall any waiver in fact made with respect to any specific default be considered or treated as a waiver of the rights or remedies of either party with respect to any other defaults or with respect to the particular default except to the extent specifically waived in writing.

MISCELLANEOUS PROVISIONS

Section 801. City's Representations

Except as may be set forth in the Environmental Assessment, (i) the Director has not received notification of any kind from any agency (including without limitation any other City Department or agency) that the Property is or may be targeted for a federal or state Superfund cleanup or may be contaminated with any Hazardous Substance, and (ii) the Director has no actual knowledge of a release or threatened release of any Hazardous Substance on the Property.

Section 802. Purchaser's Representations

Purchaser represents and warrants that Purchaser is a duly organized and validly existing Washington limited liability company and has full power and authority to enter into and perform this Agreement and the transactions contemplated hereby; that the execution and delivery of this Agreement by the undersigned individual has been duly authorized by all necessary corporate or other action; and that this Agreement is the valid binding obligation of Purchaser, enforceable in accordance with its terms.

Section 803. Notices

A notice or communication under this Agreement by either party to the other shall be effective on the earlier of the date actually received by hand delivery or by mail as



evidenced by a signed receipt for certified mail, or three days after deposited in the United States mail, postage prepaid, return receipt requested, and

- A. In the case of a notice or communication to Purchaser, if the same is addressed to Purchaser as follows:

Seneca I L.L.C.
1201 Third Avenue, Suite 2350
Seattle, WA 98191
Attn: Laurel L. Spelman
Telephone: (206) 628-3150
Facsimile: (206) 628-7105

- B. In the case of a notice or communication to the City, if addressed as follows:

Department of Neighborhoods
The City of Seattle
400 Arctic Building
700 Third Avenue
Seattle, WA 98104
Attn: Steve Sheppard
Telephone: (206) 684-0302
Facsimile: (206) 233-5142

or is addressed in such other way in respect to either party as that party may, from time-to-time, designate in writing delivered as provided in this Section. Any notice required or permitted by any applicable law also shall be effective if given in the manner specifically required or permitted by such law. Telephone and facsimile numbers are provided for information purposes only.

Section 804. Agreement Survives Conveyance

It is the intent of the parties hereto that none of the provisions of this Agreement shall be merged by reason of any deed transferring any interest in any property; and any such deeds shall not be deemed to in any way affect or impair any of the provisions, conditions, covenants, or terms of this Agreement, except as otherwise provided in this Agreement.

Section 805. Interpretation

Any titles of the several parts, Articles or Sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions. The recitals and Attachment A are by this reference incorporated into the Agreement.

Section 806. Counterparts



This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

Section 807. City Approval and Consent

The Mayor and the Director of DON are the sole persons authorized to act for and on behalf of the City in connection with this Agreement except where another is required by law or by this Agreement.

Section 808. Entire Agreement

This Agreement, including recitals and Attachment A hereto, constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes any and all prior agreements or understandings with respect to the Property.

Section 809. Attorney's Fees

In the event of any litigation, including without limitation bankruptcy, appellate, or arbitration proceedings, between the parties arising out of or in connection with this Agreement, the substantially non-prevailing party shall pay all costs and expenses incurred by the substantially prevailing party, including but not limited to attorney, paralegal and witness fees, provided, that the fees of the City's staff attorneys and paralegals will be computed on the basis rates of private attorneys and paralegals in downtown Seattle who practice in a firm having as many attorneys as are employed in the Seattle City Attorney's Office, and who have experience comparable to the City's attorneys and paralegals.

Section 810. Cooperation

The parties agree to use their best efforts diligently and promptly to take all actions necessary and appropriate in order to satisfy the conditions set forth in this Agreement and to execute and deliver all other documents reasonably necessary to carry out their respective obligations hereunder, including without limitation reasonable instructions to Escrow Agent.

Section 811. Time

Time is the essence of all provisions of this Agreement.

Section 812. Partial Invalidity

Any provision of this Agreement which shall prove to be invalid, void or unenforceable shall in no way affect, impair, or invalidate any other provision hereof, and such other provisions shall remain in full force and effect.



Section 813. Governing Law

This Agreement shall be governed by the laws of the State of Washington.

Section 814. Assignment

Purchaser shall not transfer or assign its rights or duties under this Agreement except (i) to a limited liability company to be formed prior to Closing, in which the managing member is Seneca I L.L.C., a Washington limited company, and Laurel L. Spelman and Stevens R. Trainer are co-managing members of Seneca I L.L.C. and (ii) with the City's prior written consent, which consent shall not be unreasonably withheld. Purchaser shall submit to the City all documents relating to the proposed assignment or transfer and such information concerning the proposed transferee as the City shall request. The parties agree that the basic standards for the City's consent are whether the Purchaser and the assignee have similar ownership control, principals and employees with similar real estate development experience, financial capability and, at a minimum, Seneca I L.L.C. is the managing member and Laurel L. Spelman and Stevens R. Trainer are co-managing members of Seneca I L.L.C. Any permitted assignee shall, as a condition to the effectiveness of any such assignment, confirm in writing to the City that the assignee assumes and agrees to perform all of the obligations of Purchaser under this Agreement.

Section 815. Successors and Assigns

This Agreement shall be binding upon the parties hereto and their respective, successors and assigns, subject to the limitations on transfer and assignment stated herein.

Section 816. No Third Party Beneficiaries

The provisions hereof are for the sole benefit of the parties hereto and, subject to restrictions on transfers by Purchaser stated herein, their respective successors and assigns (including mortgages to the extent provided herein). No other parties shall have any rights or remedies hereunder.

Section 817. Amendments

Amendments to this Agreement may be made only after written approval by the City and by Purchaser. Amendments which are not fairly within the scope of Ordinance _____ shall not be effective unless authorized by ordinance.

Section 818. Condemnation

In the event any portion of the Property shall be taken, damaged or condemned for public or quasi-public use, except as stated in the following sentence, all compensation awarded upon such condemnation, damaging or taking up to the amount of the unpaid purchase price shall be retained by the City and applied to the purchase price,



and any balance shall inure to Purchaser and the City shall have no claim thereto. In the event of taking, damage or condemnation by a public or quasi-public body of a portion of the Property making it infeasible for Purchaser to complete the development of the Project, Purchaser shall have the right to terminate this Agreement by written notice to the City within ten (10) days after the effective date of such taking, damage or condemnation, and if Closing has not yet occurred then all compensation shall be retained by the City and the Earnest Money shall be refunded.

Section 819. Waiver of Disclosure Statement and Right of Rescission

Purchaser hereby irrevocably waives the right to receive a disclosure statement pursuant to RCW Chapter 64.06 and waives any right to rescind this agreement under RCW Chapter 64.06.

Section 820. Brokerage Commission

Purchaser and Seller agree that no real estate brokers are involved in this transaction or shall be compensated in connection with the sale of the Property or any portion thereof. If any such commission or fee is or becomes due by reason of the conduct of one party, then that party shall pay such fee or commission and shall indemnify and hold the other party harmless from and against any liability for the same.

Section 821. Force Majeure

In the event that either party is unable to perform its obligations under this Agreement because of natural disasters, actions or decrees of governmental bodies, or labor disputes, the party who has been so affected immediately shall give notice to the other party and shall do everything reasonably possible to resume performance. In the event that any such contingencies occur and notice is so given, the party whose performance is affected shall have a reasonable time in which to resume performance and nonperformance for a reasonable period of time shall not constitute a default under this Agreement.

Section 822. Automatic Termination

Notwithstanding any other provision of this Agreement to the contrary, this Agreement shall be in full force and effect from the date first written above; provided that this Agreement shall terminate automatically on _____, 2001 if Ordinance _____ of The City of Seattle is not in full force and effect on such date. In the event of such automatic termination, none of the provisions of this Agreement shall survive, the City shall return the Earnest Money to Purchaser, and neither the City nor Purchaser shall incur any liability or obligations whatsoever to the other party to this Agreement.

EXECUTED as of the day and year first above written.

THE CITY OF SEATTLE



NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

By: Laurel L. Spelman
 Title:

By: _____
Stevens R. Trainer
Title: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this ____ day of _____, 2001, personally appeared before me Jim Diers, to me known to be Director of the Department of Neighborhoods of The City of Seattle, the municipal corporation that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned and on oath stated that he was authorized to execute said instrument and that the seal affixed, if any, is the corporate seal of said municipal corporation.

WITNESS my hand and official seal the date and year first above written.

NOTARY PUBLIC in and for the State of
Washington, residing at _____
My Commission expires _____
Print name: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this ____ day of _____, 2001, personally appeared before me
Laurel L. Spelman and Stevens R. Trainer, to me known to be the _____ and
respectively of Seneca I L.L.C., the _____ that executed the within and
foregoing instrument and acknowledged said instrument to be the free and voluntary act
and deed of said corporation, for the uses and purposes therein mentioned, and on oath
stated that he was authorized to execute said instrument and that the seal affixed, if any,
is the corporate seal of said _____.

In witness whereof I have hereunto set my hand and affixed my official seal the
day and year first above written.

NOTARY PUBLIC in and for the State of
Washington, residing at _____
My Commission expires _____
Print name: _____

ATTACHMENTS:

A. Quit Claim Deed



Attachment A

After recording, return to:

Reference number of related documents:

Grantor: The City of Seattle

Grantee: _____

Legal Description:

Abbreviated form: BLK 11 LOT 11 AND 12 EDES & KNIGHTS ADD SUPPL

Additional legal description is on first page of document.

Assessor's Tax Parcel ID#: 225450-0783,-0790,-0795,-0800

QUIT CLAIM DEED with Conditions Subsequent

Grant. The City of Seattle, a Washington municipal corporation ("Grantor"), hereby conveys and quit claims to XXXXXXXX, a XXXXXXXX ("Grantee"), for and in consideration of receipt of the sum of Three Hundred Sixty Thousand Dollars (\$360,000) and the covenants of the Grantee contained in that certain Purchase and Sale Agreement between Grantor and Grantee, dated XXXXXX, 2001 ("Agreement") that certain real property located in the City of Seattle, King County, Washington legally described as

Lots 11 and 12, Block 11, Supplementary Plat of Edes and Knights Addition to the City of Seattle, according to the plat thereof recorded in Volume 2 of Plats, page 194, records of King County, Washington; situated in the City of Seattle.

subject to all existing encumbrances, including easements, restrictions and reservations, if any.

Condition Subsequent. This deed and all rights of Grantee hereunder are subject to a condition subsequent upon the occurrence of which Grantor or its governmental successors or assigns shall have the absolute right, subject only to the express limitations set forth herein, to terminate, by notice to Grantee or by reentering and taking possession of the Property (or one or more parcels thereof, if the legal description designates separate parcels or if the Agreement provides for the division of the Property into parcels), the estate conveyed under this deed and all rights of all persons claiming by or through Grantee, whereupon fee simple title to the Property (or to one or more parcels thereof, if the



condition subsequent shall have terminated as to the other parcel or parcels) shall re-vest entirely in Grantor or its governmental successors or assigns. The condition subsequent shall have occurred if any of the following shall occur prior to the time that Grantee shall have completed construction of the Improvements required pursuant to the Agreement and shall have obtained from Grantor a Certificate of Occupancy with respect thereto:

(a) Grantee or its successor in interest shall default on, fail to perform or violate Grantee's obligations with respect to the construction of the Improvements pursuant to the Agreement (including without limitation obligations with respect to the nature of the Improvements and the dates for the beginning and the completion thereof), or shall abandon or substantially suspend construction work, and any such default, failure to perform, violation, abandonment or suspension shall not be cured, ended or remedied to the reasonable satisfaction of Grantor within thirty (30) days after Grantor's written demand to do so; or

(b) Grantee or its successor in interest shall, without the express written consent of Grantor, transfer any interest in the Property or cause or permit there to be placed on the Property any encumbrance or lien not authorized by the Agreement, unless such encumbrance or lien is paid, removed or discharged or provision is made satisfactory to the Grantor for such payment, removal or discharge, within thirty (30) days after written demand from Grantor to do so; provided that in the case of a mechanic's or materialmen's lien or notice thereof Grantee shall have the right to prevent the occurrence of a condition subsequent pursuant to this subsection (b) by bonding or depositing security under conditions reasonably adequate to protect Grantor from such liens in the event title should re-vest in Grantor under the terms hereof.

Notwithstanding the foregoing, the condition subsequent and any re-vesting of title as a result thereof in the Grantor (1) shall always be subject to and limited by, and shall not defeat, render invalid or limit in any way (a) the lien of any mortgage or deed of trust permitted by the Agreement, and (b) any rights or interest provided in the Agreement for the protection of the holders of such mortgages or deeds of trust; and (2) shall not apply to individual Parcels of the Property for which a Certificate of Occupancy has been issued as provided below.

Certificate of Occupancy. Upon the recording of a Certificate of Occupancy duly issued by the Department of Design, Construction and Land Use of the Grantor, the condition subsequent in this deed shall be of no further force or effect with respect to the Property, or Parcel thereof specified in the Certificate, as the case may be.

Miscellaneous. Capitalized terms not defined herein shall have the meanings set forth in the Agreement. Time is of the essence of all of the provisions hereof. A copy of the Agreement can be found in the Office of the City Clerk, 600 Fourth Avenue, Seattle, WA 98104.

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE
IT IS DUE TO THE QUALITY OF THE DOCUMENT.



Executed this ____ day of _____, 2001, pursuant to Ordinance No. _____

THE CITY OF SEATTLE

By: _____
Jim Diers, Director
Department of Neighborhoods

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

On this ____ day of _____, 200__, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Jim Diers, to me known to be the Director of the Department of Neighborhoods of THE CITY OF SEATTLE, the municipal corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument.

WITNESS my hand and official seal hereto affixed the day and year in this instrument above written.

NOTARY PUBLIC in and for the State
of Washington, residing at _____.
My commission expires _____.

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1 Section 5. This ordinance shall take effect and be in force thirty (30) days from and after its
2 approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after
3 presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

4 Passed by the City Council the 6th day of August, 2001, and signed by me in open
5 session in authentication of its passage this 6th day of August, 2001.

6
7 President _____ of the City Council

8 Approved by me this _____ day of _____, 2001.

9
10 Mayor _____

11
12 Filed by me this _____ day of _____, 2001.

13
14 _____ City Clerk

15 (Seal)



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STATE OF WASHINGTON – KING COUNTY

--SS.

135102
City of Seattle, Clerk's Office

No. ORDINANCE TITLES ONLY

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CTOT:120475-120478,480

was published on

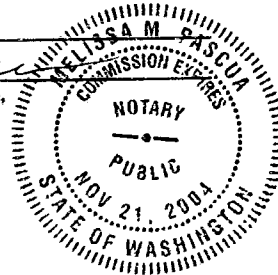
08/21/01

J. Hedman
Subscribed and sworn to before me on

08/21/01

Melissa M. Pasqua
Notary public for the State of Washington,
residing in Seattle

Affidavit of Publication



State of Washington, King County

City of Seattle

TITLE-ONLY PUBLICATION

The full text of the following ordinances, passed by the City Council on August 13, 2001, and published here by title only, will be mailed upon request, or can be accessed electronically at <http://clerk.ci.seattle.wa.us>. For further information, contact the Seattle City Clerk at 694-3344.

ORDINANCE NO. 120475

AN ORDINANCE relating to the Department of Neighborhoods; accepting the proposal of Pacific Domains, Inc. to purchase and develop property located at the northeast corner of 12th Avenue and East Jefferson Street in the 12th Avenue Development Area of the City of Seattle; authorizing execution of a contract for sale of the property; conveyance of the property by quit claim deed; execution of closing documents; and administration of the transaction; and designating the disposition of sale proceeds.

ORDINANCE NO. 120476

AN ORDINANCE relating to the Department of Neighborhoods; accepting the proposal of Pacific Domains, Inc. to purchase and develop property located at the southeast corner of 12th Avenue and East James Court in the 12th Avenue Development Area of the City of Seattle; authorizing execution of a contract for sale of the property by quit claim deed; execution of closing documents; and administration of the transaction; and designating the disposition of sale proceeds.

ORDINANCE NO. 120477

AN ORDINANCE relating to the Department of Neighborhoods; accepting the proposal of Seneca I L.L.C. to purchase and develop property located at the northwest corner of 13th Avenue and East Columbia Street in the 13th Avenue Development Area of the City of Seattle; authorizing execution of a contract for sale of the property by quit claim deed; execution of closing documents; and administration of the transaction; and designating the disposition of sale proceeds.

ORDINANCE NO. 120478

AN ORDINANCE relating to Project LIA-Off; reappropriating and reducing the appropriation previously made for Project LIA-Off in the Human Services Department 2001 Adopted Budget; transferring such appropriation to the Department of Parks and Recreation; and increasing the expenditure allowance in the 2001 Adopted Budget of Department of Parks and Recreation.

ORDINANCE NO. 120480

AN ORDINANCE appropriating money to pay certain audited claims and ordering the payment thereof.

Publication ordered by JUDITH PIPPIN, City Clerk.

Date of official publication in Daily Journal of Commerce, Seattle, August 21, 2001. 8/21(136102CI)